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Source: *The Journal of Race Development*, Vol. 2, No. 3 (Jan., 1912), pp. 246-255

Published by:

Stable URL: <http://www.jstor.org/stable/29737915>

Accessed: 17/07/2014 09:24

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THE FAMILY OF NATIONS IDEA AND JAPAN

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From the late years of the sixteenth century the idea of a family of nations frequently appeared. The Grand Design of Henry IV in 1603 set forth a plan "to divide proportionately the whole of Europe between a certain number of Powers, which would have nothing to envy one another for on the ground of equality, and nothing to fear on the ground of the balance of power" (VI, *Memoires du Duc de Sully*, 129). The number of states was to be fifteen, divided into three classes, (1) six hereditary monarchies: France, Spain, Great Britain, Denmark, Sweden and Lombardy; (2) five elective monarchies: the Empire, the Papacy, Poland, Hungary and Bohemia; and (3) four republics: Venice, the Republic of Italy, Switzerland and the Belgian Republic.

Other propositions looking toward the formation of a "society of states" followed. In 1693 William Penn set forth a plan in an "Essay towards the Present and Future Peace of Europe by the Establishment of an European Dyet, Parliament, or Estates." This, like other plans, aimed particularly to secure peace among the nations. That was the plan of Abbé Saint Pierre a few years later, of von Gentz a hundred years later, and of many of our own day.

There was developing at the same time with these early plans a theoretical basis for a family of nations resting not on the desire for peace but on the current conception of the nature of the state as founded in natural law. Francisco Suarez (1548-1617), a learned Spanish theologian writing in 1612, refers to the unity of the human race, saying that every state, republic or kingdom forms a member of this general body. He further says, "None of these states is sufficient for itself; all have need of reciprocal support, association, and mutual relations to ameliorate their situa-

ation" (*Tractatus de Legibus ac de Deo Legislatore*, II, 19, 9). Grotius, the greatest contributor to the science of international law writing in 1625, finds a similar basis for many obligations. Wolf, writing in the middle of the eighteenth century after presenting the duties of nations toward one another, says, "Finally as the nations are like the citizens of a great civil society, they ought to live in harmony with one another and consequently they ought to avoid with care all discord and all that leads thereto" (*Institutiones*, XCXXIV). Vattel, whose systematic work influenced thought after the middle of the eighteenth century, particularly in England and America, wrote in 1758, "Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, live together in a state of nature, nations, or sovereign states, are to be considered as so many free persons, living together in the state of nature." These nations Vattel says later "are obliged to cultivate toward one another the intercourse of humanity" which results in the establishment of the society of nations (*Droit des Gens, Preliminaries*, secs. 4, 11). Many later writers and practical statesmen follow the doctrine of natural law as a basis for the unity known as the family of nations.

Whatever the theoretical basis of the idea of the family of nations, historically the treaty of Westphalia of 1648 established a European family of nations which assumed to determine what other political unities should be received to membership on terms of equality. Practical considerations often furnished support for the theoretical arguments already mentioned as supported by text-writers.

Prior to the treaty of Westphalia in 1648, there were relations among *de facto* states. Many of these states had been accustomed to send and to receive ambassadors or other representatives. The long and ardent discussions preceding the signing of the treaty of 1648 certainly brought about a realization of the necessity for a greater agreement upon the methods of interstate negotiation. The assembling of the representatives of so many states was in itself significant of the realization of the community of interests among

European states. The development of the custom of sending by one state of diplomatic representatives to reside permanently near the sovereign of another state, while sometimes accompanied by infelicitous jealousies, was nevertheless steady. The idea of unity of interest among European states became an accepted principle of European policy. The intercourse of European states, for many years intermittent, became a settled practice. The collapse of the idea of one imperial power dominating all others made it necessary that something be found to take its place if stability in European conditions was to be maintained. The idea that the states of Europe formed a family came to be prevalent. The reference on the part of these states to common standards gave the idea sufficient support.

The states participating in the negotiations which led to the treaty of Westphalia were considered as members of the family of nations, and their standing in the family was determined as being that recognized by the treaty. Careful investigation into the history of the acquisition of this standing was not thought expedient. Facts were accepted as they were.

This European family did not include all the states which have subsequently become parts of the European system. Russia was among those not directly represented in the negotiations preceding 1648. Russia under Peter the Great looked toward Europe rather than toward Asia, and was gradually admitted to the European councils, and even was granted a share in the partition of one of the formerly recognized states when Poland was divided.

Changes of territory and readjustment of power brought new states within the European family or caused the disappearance of old states. The idea that the international family was made up exclusively of members from western Europe disappeared, and a broader conception took its place.

Naturally membership in the family of nations must be limited to states which are willing to recognize the principles of law upon which the international society is based. These principles were regarded as European, and prevailed

among states having what was called a Christian civilization and a degree of common interests, yet not all European states were regarded as members of the international society. Only those states which had acquired a standard satisfactory to the self-constituted judges were considered as within the family.

With the recognition of the United States the circle of the family of nations was somewhat enlarged. The United States was, however, an expansion of Europe, but as Hamilton said in speaking of the United States, "Ever since we have been an independent nation, we have appealed to and acted upon the modern law of nations as understood in Europe. Various resolutions of Congress during our Revolution, the correspondence of executive officers, the decisions of our courts of admiralty, all recognize this standard" (*Letters to Camillus*, No. 20). It was understood also that the United States would not become involved in European affairs. As Washington said in his farewell address in 1796, "Europe has a set of primary interests which to us have none or a very remote relation."

France had favored the recognition of the United States as a means to bring pressure upon England. Spain early realized that this course would make it more difficult for her to maintain her colonies in the New World. The policy of England was favorable to the recognition of the statehood of the revolting Spanish colonies in the early nineteenth century.

The policy of the continental states in the early years of the nineteenth century gave rise to an American doctrine which makes the states of the western hemisphere a family for certain purposes. President Roosevelt, in his message of December 3, 1901, announced that "The Monroe Doctrine should be the cardinal feature of the foreign policy of all the nations of the two Americas as it is of the United States." As in earlier days, writers had produced treaties upon "European International Law," so in these later days appear such treatises as "Le Droit International Américain" (1910) of Dr. Alexandre Alvarez.

While there may be certain phases of the principles of

interstate negotiation which apply particularly to a given continent as to Europe or America, the doctrine of the family of nations would seem to support the contention that certain fundamental principles should prevail among all states members of the international circle.

While the states of North and South America were less frequently in relations with other states than were the continental states, yet they claimed all the privileges and immunities of the oldest and most powerful members of the international society. Their claims were sometimes disregarded, as is evident in the extension of the principle of the exercise of the right of asylum in many South and Central American states.

Turkey, while its system of government and its religion was unlike the European systems, was in 1856 formally admitted to "the participation in the advantages of European public law and concert."

The other states admitted to the family had been constituted out of peoples who had extended the European civilization to other lands. Turkey was admitted to the family without the qualifications formerly thought to be necessary for membership. Wherein her *legal system* did not conform to the European system, it was necessary for Turkey to allow to foreigners special exemptions which they had previously enjoyed, and in many respects the admission was rather nominal than real, and the Turkish position in Europe has been the subject of the play of European politics.

Sir William Scott, Lord Stowell, in 1801, speaking of the Turkish dominions, said "The inhabitants of those countries are not professors of exactly the same law of nations with ourselves. In consideration of the peculiarities of their situation and character, the court has repeatedly expressed a disposition not to hold them bound to the utmost rigor of that system of public laws on which European states have so long acted in their intercourse with one another" (*The Madonna de-l Burso*, 4 C., Rob. 169).

Other states, particularly in Asia, had for many years granted special privileges and protection to citizens of

states which were members of the family of nations under the form of extraterritoriality. Europeans had in these states the right to be tried by their own courts, while similar privileges were not extended to foreigners in European states. These states not members of the family of nations were not invited to participate in the conferences of European powers save in such general conferences as, for example, those assembled at The Hague in 1899 and 1907.

Till 1854 Japan had been generally closed to foreigners. The treaty of March 31, 1854, provided for peace, commerce and navigation between the United States and Japan. British, Russian, French, Portuguese and German treaties soon followed. The treaty of 1858 with the United States was more extended in scope, but the Japanese treaties before the last decade of the nineteenth century usually contained clauses like that in Article 6 of the treaty of 1858 with the United States, which says, "Americans committing offences against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law."

Special quarters had been set aside in cities for the use of foreigners, and special exemptions were extended to these quarters. Certain of these privileges gave to the foreigners advantages not possessed by the Japanese. The treaty between the United States and Japan, which was signed November 22, 1894, and whose important clauses became operative July 17, 1899, provided in Article I that,

"The citizens or subjects of each of the two High Contracting Parties . . . shall have free access to the Courts of Justice in pursuit and defense of their rights; they shall be at liberty equally with native citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such Courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects."

Article XVII of the same treaty provides that "The several Foreign Settlements in Japan shall, from the date this treaty comes into force, be incorporated with the respec-

tive Japanese Communes, and shall thenceforth form part of the general municipal system in Japan. The competent Japanese authorities shall thereupon assume all municipal obligations and duties in respect thereof, and the common funds and property, if any, belonging to such settlements shall at the same time be transferred to the said Japanese Authorities."

The Japanese fully realized that by these new agreements with the members of the family of nations, the new Island Empire had been fully received into the international society in the most formal and deliberate manner. The work of the special embassy which Japan had sent to the west in 1871 had gradually become effective. Great Britain offered a revised treaty in 1884. Ten years later the treaties with most of the great states were revised, and in 1899, after forty-five years from the coming of Commodore Perry to the closed doors of Japan, the Empire was received into full fellowship of the international family.

Marquis Yamagata, the minister president of state, in an official notification, said on July 1, 1899:

"The revision of the treaties in the sense of placing on a footing of equality the intercourse of this country with foreign States, was the basis of the great liberal policy adopted at the time of the restoration, and that such a course conduces to enhance the prestige of the Empire and to promote the prosperity of the people, is a proposition not requiring demonstration. But if there should be anything defective in the methods adopted for giving effect to the treaties, not merely will the object of revision be sacrificed, but also the country's relations with friendly powers will be impaired and its prestige may be lowered. It is of course beyond question that any rights and privileges accruing to us as a result of treaty revision should be duly asserted. But there devolves upon the Government of this Empire the responsibility, and upon the people of this realm, the duty of protecting the rights and privileges of foreigners, and of sparing no effort that they may one and all be enabled to reside in the country confidently and contentedly. It behooves all officials to clearly apprehend the august intentions, and to pay profound attention to these points" (United States Foreign Relations, 1899, p. 470).

The obligations assumed by Japan were as fully realized as the privileges gained. The chief officials of the departments of government issued instructions to the officials under

them showing this realization of obligation. The instructions of Viscount Katsura, minister of war, breathes the spirit of restraint which was evident in all.

“The successful revision of treaties has placed the country on a footing equal with western powers, but it must not be forgotten that at the same time grave responsibilities thereby devolve upon it. On the morrow of the operation of revised treaties foreigners will come and go as they like, will freely fix their abodes or pursue business in the interior, and in consequence the people will have far greater occasions than before of coming into contact with foreigners. Now, history, both Japanese and foreign, shows that international troubles have had their origin very frequently in the daily intercourse between the people of a land and aliens, consequently the people of this Empire, now that the system of mixed residence will be inaugurated, must act with discretion and magnanimity toward foreign neighbors, so that the reality of being a civilized power may be manifested in the eyes of foreign nations, and that any accident involving trouble with foreign countries may be efficiently guarded against. The reputation of our soldiers as sincere and loyal subjects of His Majesty, faithful in the discharge of the public duties, and, as the flower of the nation, imbued with the spirit of manly valor, is acknowledged alike at home and abroad. Suppose the soldiers crowned with such renown and praise be betrayed into committing indiscreet acts toward foreigners. The consequence will not only result in affecting the dignity of the troops, but may even invite ignominy upon the nation and involve the imperial court in difficulty. Bearing all these points in mind the troops must strictly be on their guard against all indiscreet actions (United States Foreign Relations, 1899, p. 474).

These instructions all reflected the spirit of His August Majesty, the Emperor, whose rescript of June 30, 1899, said:

“Governing our realm by the abiding aid of our ancestors’ achievements, which have enabled us to secure the prosperity of our people at home and to establish relations of close amity with the nations abroad, it is a source of heartfelt gratification to us that, in the sequel of exhaustive planning and repeated negotiations, an agreement has been come to with the powers, and the revision of the treaties, our long-cherished aim, is today on the eve of becoming an accomplished fact; a result which, while it adds materially to the responsibilities of our Empire, will greatly strengthen the basis of our friendship with foreign countries.

“It is our earnest wish that our subjects, whose devoted loyalty in the discharge of their duties is conspicuous, should enter earnestly into our sentiments in this matter and, in compliance with the great policy of opening the country, should all unite with one

heart to associate cordially with the peoples from afar, thus maintaining the character of the nation and enhancing the prestige of the Empire.

"In view of the responsibilities that devolve upon us in giving effect to the new treaties, it is our will that our ministers of state, acting on our behalf, should instruct our officials of all classes to observe the utmost circumspection in the management of affairs, to the end that subjects and strangers alike may enjoy equal privileges and advantages and that, every source of dissatisfaction being avoided, relations of peace and amity with all nations may be strengthened and consolidated in perpetuity" (United States Foreign Relations, 1899, p. 469).

Of the operation of the new treaties there has been the highest commendation. President McKinley, in his message of December 5, 1899, said,

"The treaty of commerce and navigation between the United States and Japan on November 22, 1894, took effect in accordance with the terms of its XIXth Article on the 17th of July last, simultaneously with the enforcement of like treaties with the other powers, except France, whose convention did not go into operation until August 4, the United States being, however, granted up to that date all the privileges and rights accorded to French citizens under the old French treaty. By this notable conventional reform Japan's position as a fully independent sovereign power is assured, control being gained of taxation, customs revenues, judicial administration, coasting trade, and all other domestic functions of government, and foreign extra-territorial rights being renounced.

"Comprehensive codes of civil and criminal procedure according to western methods, public instruction, patents and copyrights, municipal administration, including jurisdiction over the former foreign settlements, customs tariffs and procedure, public health, and other administrative measures have been proclaimed. The working of the new system has given rise to no material complaints on the part of the American citizens or interests, a circumstance which attests the ripe consideration with which the change has been prepared" (United States Foreign Relations, 1899, p. XXIV).

When early in 1902 there was announced an agreement cementing an alliance between Great Britain, hitherto proud of her traditional "splendid isolation," and Japan only recently admitted to the international circle, many of those best informed upon international relations were amazed. Time has seemed to show the wisdom of the British policy, but most significant and hopeful, for those who look forward to the days when peace shall prevail, is this agreement as

an evidence that in this newer age the family of nations will be based not upon the independence but upon the interdependence of its members.

The act of admission of Japan to the family of nations marks a stage in the development of the idea of international society. The membership in the family of nations is no longer confined to European nations or to nations possessing European civilization or to states bound closely with the European system, but regardless of historical origins, religious preferences, or narrow views of international policies is extended to a state able to maintain an efficient and stable political organization. Thus, not as the result of war, not by the sundering of political relations which had bound colony to mother country, not as the compromise thrown to appease international jealousy, nor even as a matter of political expediency, was the Empire of Japan admitted to the international circle, but as the recognition that a state separated far from western nations in latitude, language, and customs had won its place by the development of a worthy civilization as an equal among equals in the family of nations.